

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-v-

MEMORANDUM AND ORDER

Case No. 18-cr-00502 (FB)

JONATHAN DEUTSCH,

-----X

Appearances:

For the Defendant:

DEIRDRE VON DORNUM

KANNAN SUNDARAM

Federal Defenders of NY

One Pierrepont Plaza

Brooklyn, NY 11201

For the United States of America:

MEGAN ELIZABETH FARRELL

MARGARET ELIZABETH LEE

U.S. Attorney's Office, E.D.N.Y.

271 Cadman Plaza East

Brooklyn, NY 11201

BLOCK, Senior District Judge:

Jonathan Deutsch (“Deutsch”) is presently detained at Brooklyn’s Metropolitan Detention Center while he awaits trial on five counts of production of child pornography.¹ A “borderline” diabetic, Deutsch moves under the Bail Reform Act, 18 U.S.C. § 3142(i), for “temporary release on bail during the pendency of the COVID-19 pandemic.” Deutsch Emergency Mot. (“Mot.”) at 1, 7. Sensitive to the unique concerns raised by his motion and the COVID-19 pandemic, the Court held a hearing on April 2, 2020, to allow counsel for Deutsch to discuss the proposed conditions of his release. After careful review and for the following reasons, Deutsch’s motion for temporary release is denied.

¹ To accommodate counsels’ schedules, Deutsch’s trial was adjourned from December 2019 to June 2020. He has petitioned the Court for bail on four prior occasions and each time, after careful consideration, the Court denied his request.

* * *

The Bail Reform Act “permit[s] the temporary release of [a] person . . . to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another *compelling reason*.” 18 U.S.C. § 3142(i) (emphasis added). Where a defendant moves for release on the basis of a “compelling reason” like a serious medical condition, courts must carefully balance the “total harm and benefits to prisoner and society that continued pretrial imprisonment of [a defendant] will yield.” *United States v. Little*, No. 20 CR 57(GBD), 2020 WL 1439979, at *5 (S.D.N.Y. Mar. 24, 2020). “As in many things, a case by case evaluation is essential,” and what justifies the release of one defendant will not necessarily do so for another. *United States v. DiSomma*, 951 F.2d 494, 497 (2d Cir. 1991) (discussing the similar context of a motion for release pre-sentencing); *see also Little*, 2020 WL 1439979, at *4 (“[A] ‘case-by-case’ approach is required at any stage of the case in assessing the propriety of pretrial detention.” (citing *United States v. Gonzales Claudio*, 806 F.2d 334, 340 (2d Cir. 1986))).

Deutsch posits that, given his “pre-diabetes” diagnosis, the on-going COVID-19 pandemic is a compelling reason for his temporary release. He proposes that upon release he be allowed to travel (most likely by car or bus) to Florida where he will live with his parents (who reside in a 55-and-over community) “under conditions of home detention, electronic monitoring and no internet access, pursuant

to a \$200,000 bond signed by his father Stuart Deutsch, and secured by the father's home." Mot. at 8.

While the Court is mindful of Deutsch's pre-diabetes diagnosis,² Deutsch does *not* have Type 1 or Type 2 diabetes, he does not suffer from any pre-existing respiratory issues, he is young, and his medical condition appears well managed throughout his pretrial detention. The Bureau of Prisons is taking system-wide precautions to mitigate the spread of infection within its facilities and, as far as the Court has been made aware, Deutsch has not come into direct contact with anyone who has tested positive for the virus.³

Moreover, Deutsch's proposed bail package involves interstate travel and relocation to a 55-and-over community in Florida. The trip alone involves approximately 18 hours of driving across 8 states and over 1,200 miles. It necessarily requires multiple stops for food and gas, and likely at least one overnight stay at a hotel. Common-carrier bus companies have suspended service in

² According to the CDC, nearly 1 in 3 Americans have prediabetes. CDC, *Diabetes and Prediabetes* (Aug. 7, 2019), <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/diabetes-prediabetes.htm>. Like many with that diagnosis, Deutsch takes metformin to manage his blood sugar. Meltem Cetin & Selma Sahin, *Microparticulate and nanoparticulate drug delivery systems for metformin hydrochloride*, Drug Delivery (Sept. 22, 2015) (worldwide, 120 million people are prescribed metformin), <https://www.tandfonline.com/doi/full/10.3109/10717544.2015.1089957>.

³ As of April 3, 2020, two inmates at Brooklyn MDC have tested positive for COVID-19. Deutsch has not been tested.

parts of New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, and Georgia—all states that Deutsch would cross on the way to Florida.⁴ Thus, in all likelihood Deutsch travel by car with his 68-year-old father, who would accordingly have to make the journey twice: first from Florida to New York to pick-up Deutsch, and then from New York to Florida with Deutsch in tow.⁵

Also, the proposed trip comes at a time when both Florida and the CDC have issued travel advisories for New York residents. *See CDC, Domestic Travel Advisory for New York, New Jersey, & Connecticut* (Mar. 28, 2020); *see also* Fla. Exec. Orders 20-80 (Mar. 23, 2020), 20-82 (Mar. 24, 2020), 20-86 (Mar. 27, 2020). In particular, recent Florida Executive Orders mandate that all persons traveling from “the New York Tri-State Area” must self-isolate for 14 days upon arrival in Florida and that non-compliance can result in a \$500 dollar fine and/or 60-day jail sentence. Fla. Exec. Orders 20-82, 20-86. To implement those Orders, Florida’s Department of Transportation installed checkpoints on Interstate Routes I-95 and

⁴ *See* Greyhound, *COVID-19 Update: Schedule and Service Changes* (accessed Apr. 6, 2020), <https://www.greyhound.com/en/help-and-info/travel-info/schedule-service-changes>. *Cf.* Peter Pan Bus, *COVID-19 Update: Peter Pan Bus Lines Pausing Service* (accessed Apr. 6, 2020), <https://peterpanbus.com/coronavirus/>.

⁵ Deutsch’s driver’s license—which may or may not still be valid, the record is unclear—is in the possession of his parents in Florida. Based on the information provided by counsel therefore, it is unclear whether Deutsch could drive himself to Florida. In any event, the Court’s concerns about interstate travel and increased exposure to coronavirus remain unchanged.

I-10 to monitor inbound traffic and requires that “each arriving traveler . . . complete a traveler form” disclosing “contact information and trip details.” Fla. Dep’t of Transp., *FDOT Furthers the Implementation of Executive Order 20-86 at Florida/Georgia Line on I-95* (Mar. 29, 2020); *FDOT Provides Guidance for Implementation of Executive Order 20-86* (Mar. 28, 2020). At bottom, the proposed bail package creates an inappropriate risk; it involves extended travel and increased exposure to the coronavirus for Deutsch, his father, and the general community, and any exposure that occurs during the trip will result in additional risk to the residents of the 55-and-over community where Deutsch’s parents reside.

When courts have applied § 3142, they have done so sparingly and in circumstances where a defendant suffered from a terminal illness or serious injuries. *See, e.g., United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y. 1993) (permitting release of defendant suffering from terminal AIDS that could no longer be managed by correctional authorities). At this time, and given the risks posed by Deutsch’s proposed travel and relocation, the Court concludes that the possibility of an outbreak at MDC is not a “compelling reason” for Deutsch’s release.⁶

⁶ Counsel for Deutsch and the Government are directed to keep the Court informed of any developments in Deutsch’s health and the conditions at MDC.

* * *

For the foregoing reasons, Deutsch's motion for temporary release is denied.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
April 7, 2020